

GAHC020003302019



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(KOHIMA BENCH)

Case No. : WP(C)/99/2019

ACHEMLA S. SANGTAM
MEDICAL ATTENDANT
CHARE PRIMARY HEALTH CENTRE
TUENSANG, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 4 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF N/L
KOHIMA

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF N/L
DEPT. OF HEALTH AND FAMILY WELFARE
N/L
KOHIMA

3:THE PRINCIPAL DIRECTOR
DEPT. OF HEALTH AND FAMILY WELFARE
N/L
KOHIMA

4:THE CHIEF MEDICAL OFFICER
DEPT. OF HEALTH AND FAMILY WELFARE
TUENSANG
N/L

5:THE MEDICAL OFFICER
PRIMARY HEALTH CENTRE
CHARE
TUENSANG
N/L

**BEFORE
HON'BLE MR JUSTICE MRIDUL KUMAR KALITA**

For the Petitioner : Mr. L. L. Sangtam,
Advocate
For the Respondent : Ms. Livika, Govt. Advocate
Nagaland

Date of Hearing : 23.05.2023

Date of Judgment : 30.05.2023

JUDGMENT & ORDER

(Mridul Kumar Kalita, J)

- 1.** Heard Mr. L. L. Sangtam, learned counsel for the petitioner. Also heard Ms. Livika, learned Government Advocate, Nagaland.
- 2.** The petitioner has approached this Court by filing this instant writ petition under Article 226 of the Constitution of India impugning the action of the State respondents in keeping the joining report of the petitioner dated 29.10.2018 in abeyance and in not releasing the petitioner's salary till date and for issuing of a Writ in the nature of Mandamus and/or any other appropriate writ against the respondent.
- 3.** The petitioner's case, in brief, is that by order bearing No. DHFW-3/VACANCY/GR-IV/TSG/2017-18/7546-15 dated 26.10.2018 issued by the Principle Director, Directorate of Health & Family Welfare, Nagaland, Kohima (*respondent No. 3*), the present petitioner was appointed to the post of Medical Attendant at Chare, PHC under the establishment of Chief Medical Officer, Tuensang, Nagaland in the Pay Matrix of Rs.15,500/- per month (pre-revised Pay Band of Rs.4400-17,200/- per month with Grade Pay of Rs.1300/- per month) on temporary basis.

4. Thereafter, the Petitioner reported to the Medical Officer, Primary Health Centre, Chare (*Respondent No. 5*) and submitted her joining report by letter dated 29.10.2018 which was forwarded to the Chief Medical Officer, Department of Health & Family Welfare, Tuensang (*Respondent No. 4*). It is contended by the Petitioner that the said appointment letter was issued by the Respondent No. 3 to the Petitioner after following the due process of law. However, to utter shock and surprise, the Respondent No. 4 instead of accepting the joining report, gave a noting on the joining report that the Petitioner's joining report may be kept in abeyance unless authenticated by the Head of the Department i.e. Respondent No. 3. Being aggrieved, by the action of the Respondent No. 4, the Petitioner submitted a representation to the Respondent No. 3 on 19.03.2019, *inter alia*, stating therein that she joined as Medical Attendant at Primary Health Centre, Chare as per the appointment letter issued to her, on 29.10.2018, however, in spite of lapse of four months, she has not been communicated as regards whether her joining report has been accepted or not, neither her salary was released to her. It is also contended by the petitioner that though the Respondent No. 4 has kept the joining report of the Petitioner in abeyance. However, by letter bearing No. CMO-1/11/2018-2019/501 dated 21.06.2019, the Respondent No. 4 himself submitted the absenteeism report of the Petitioner to the Respondent No. 3.

5. Mr. L. L. Sangtam, learned counsel for the Petitioner has submitted that the petitioner was appointed with approval from the Government after following due process of law. However, the Respondent No. 4 by reasons best known to Respondent No. 4 himself kept the joining report of the Petitioner in abeyance without any rhyme or reasons. It is submitted

by learned counsel for the Petitioner that the said action of Respondent No. 4 is illegal and arbitrary.

6. On the other hand, Ms. Livika, learned Government Advocate representing the Respondent Nos. 1 to 5 has submitted that against the resultant vacancy due to retirement of one Shri Akhingba Sangtam, the earlier incumbent to the post of Cook, Primary Health Centre, Chare, one Miss Tontinero was appointed, however, on receipt of a complaint from one Shri Yangtsapi Sangtam (the petitioner in WP(C) No. 122(K)/2019) for cancellation of said appointment, the approval to the appointment of Miss Tontinero was cancelled. Learned Government counsel has further submitted that though the present petitioner was appointed against the vacant post of Medical Attendant, PHC, Chare, however her joining report was kept in abeyance and her appointment was not given effect to as one Shri Yangtsapi Sangtam had filed a Writ Petition No. 122(K)/2019 claiming his right to be appointed against the said post on the basis of land ownership and for the same reason, the appointment of the present petitioner has been kept in abeyance. Ms. Livika, learned Government counsel has also submitted that by order dated 13.08.2019 passed by this Court in WP(C) No. 122(K)/2019, which was filed by Shri Yangtsapi Sangtam and wherein the present petitioner is also impleaded as respondent No. 5, it was ordered by this Court that the appointment of Respondent No. 5 as Medical Attendant, PHC, Chare by order dated 26.10.2018 shall be subject to the outcome of the said writ petition.

7. I have considered the rival submissions of learned counsel for both the sides as well as considered the materials available on record.

8. It appears that by Judgment and Order dated 30.05.2023 passed in

WP(C) No. 122(K)/2019, the impugned appointment order No. DHFW-3 VACANCY/GR-IV/TSG/2017-18 dated 26.10.2018 appointing the present petitioner to the post of Medical Attendant at PHC, Chare has been quashed and her appointment to the said post has been set aside.

9. In view of the aforesaid Judgment and Order dated 30.05.2023 passed in WP(C) No. 122(K)/2019, the question of directing the Respondent No. 4 to accept the joining report of the present petitioner does not arise. As regards the prayer of the petitioner regarding release of her salary, it is not clear from the materials available on record as to whether she has rendered any service as Medical Attendant at PHC, Chare in pursuant to the impugned appointment letter issued to her which has already been quashed. However, if she has rendered any service at PHC, Chare as Medical Attendant, a liberty is given to the preset petitioner to approach Respondent No. 4 with a representation claiming remuneration against the service so rendered. If the present petitioner does so, the Respondent No. 4 shall verify as to whether the present petitioner has rendered any service as Medical Attendant at PHC, Chare and if it is found that she has actually rendered any such service she may be given appropriate remuneration for such numbers of days for which she has actually rendered her services as a Medical Attendant at the rate of scale of salary as mentioned in her appointment letter (since quashed).

10. With the above observations, this Writ Petition is accordingly disposed of.

JUDGE

Comparing Assistant